

FILED 14 SEP 13 11:15 SDC:WFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

DAVID RAY LICON

Petitioner,

Civil No. 10-255-SU

v.

FINDINGS AND
RECOMMENDATION

STATE OF OREGON,

Respondent.

SULLIVAN, Magistrate Judge.

Petitioner filed a "Prayer for Immediate Release from Parole" (#1) which was properly docketed as a petition for habeas corpus relief under 28 U.S.C. 2254. By Order (#4) entered July 1, 2010, petitioner was advised of the

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requirements of Local Rule 295-1(a) and allowed 30 days to file an amended petition on a form to be provided by the clerk. Petitioner was advised that failure to file an amended petition within 30 days would result in the dismissal of this proceeding for failure to prosecute. Petitioner has not filed an amended petition or requested an extension of time in which to do so.

Petitioner's "Prayer for Immediate Release from Parole" (#1) construed as a petition for habeas corpus relief under 28 U.S.C. 2254) should be denied without prejudice on the ground that it fails to comply with the requirements of the Local Rules. This proceeding should be dismissed for failure to prosecute and for failure to comply with a court order. Petitioner's Motion for Summary Judgment (#7) should be denied as moot.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written

objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. This cause is not appropriate for appellate review. See, 28 U.S.C. § 2253(c)(2).

DATED this 8th day of September, 2010.

A handwritten signature in cursive script, reading "Patricia Sullivan", written over a horizontal line.

Patricia Sullivan
United States Magistrate Judge